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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,318	12/06/2000	Steve Paboojian	PAT053246-US-CNT02	1028

1095 7590 08/31/2011

NOVARTIS  
CORPORATE INTELLECTUAL PROPERTY  
ONE HEALTH PLAZA 101/2  
EAST HANOVER, NJ 07936-1080

EXAMINER
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MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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08/31/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/731,318	<b>Applicant(s)</b> PABOOJIAN ET AL.	
	<b>Examiner</b> MICHAEL MENDOZA	<b>Art Unit</b> 3734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1-4, 13-22 and 31-34 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☒ Claim(s) 13-22 and 31-34 is/are allowed.
- 7) ☒ Claim(s) 1-4 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/26/2011 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection. The applicant has amended the independent claim 1 to include new limitations. The new limitations change the scope of the claim requiring new consideration and an updated search.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

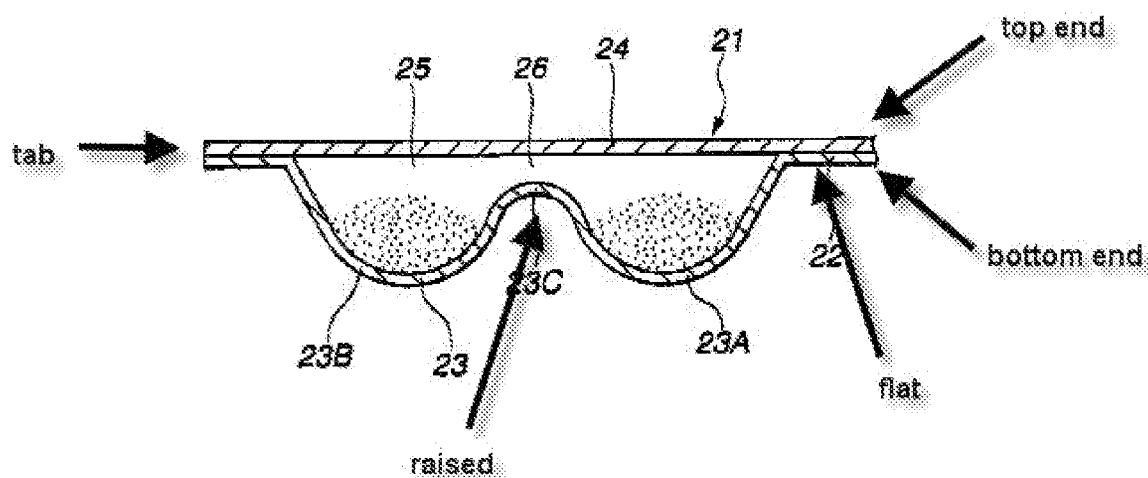
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-4 are rejected under 35 U.S.C. 102(a) as being anticipated by Ohki EP 1106196.

5. Ohki teaches a system for aerosolizing a powdered medicament the system comprising: a dry powder inhaler (fig. 18) and a receptacle (fig. 17), the receptacle

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comprising: a receptacle body that defines a sealed cavity containing powdered medicament (fig. 17), wherein the receptacle body has a top end (24) and a bottom end (22), wherein the bottom end (22) of the receptacle body includes a raised central region (23c) that extend upwardly into the cavity (fig. 17), and wherein the receptacle is shaped and adapted to be insertable into the dry powder inhaler and wherein the raised central region is shaped to facilitate extraction of the powdered medicament when air or another gas is drawn through the cavity (fig. 18) so that the powdered medicament exits the cavity through the top end (through 11b); wherein the receptacle body further comprises at least one curved wall that in combination with the raised central region forms a generally semi-toroidal geometry in the cavity (fig. 16); wherein a portion of the bottom end is flat in geometry; wherein the receptacle body further includes a tab extending from the cavity.



***Allowable Subject Matter***

6. Claims 13-22 and 31-34 are allowable over the prior art of record.
7. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a method for aerosolizing a powdered medicament, the method comprising: inserting a bottom end of an extraction tube into the cavity such that the bottom end of the extraction tube is aligned with a raised central region and is spaced above the bottom end of the receptacle; forming vents in the top end of the receptacle about a periphery of the cavity; and in combination with other method steps of the independent claim.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 10:00 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, ***please contact the examiner's supervisor, GARY JACKSON, at (571) 272-4697.*** The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

***If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to***

***TC3700\_Workgroup\_D\_Inquiries@uspto.gov.***

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. M./  
Examiner, Art Unit 3734

/Gary Jackson/  
Supervisory Patent Examiner  
Art Unit 3734